

ORIGINAL

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 8 JOHNS & ALLYN, A.P.C.

E-filing

FILED  
 JUL 26 2012  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

11 MICHAEL DeMARTINI; and RENATE  
 12 DeMARTINI,

13 Plaintiffs,

14 vs.

15 THOMAS CHRISTOPHER JOHNS; JOHNS  
 16 & ALLYN, A.P.C.; and DOES 1 TO 30,  
 inclusive,

17 Defendants.

Case No.: **CV 12 3929**

DECLARATION OF T. CHRISTOPHER  
 JOHNS IN SUPPORT OF NOTICE OF  
 REMOVAL OF CIVIL ACTION UNDER 28  
 U.S.C. §1441 PURSUANT TO 28 U.S.C. §  
 1332

State Action Filed: June 27, 2012

18 I, T. CHRISTOPHER JOHNS, declare as follows:

19 1. I am an attorney duly licensed to practice before all courts in the State of  
 20 California. I am a principal of Johns & Allyn, A.P.C. located in San Rafael, California.

21 2. I am over 18 years of age and I have personal knowledge of the facts contained  
 22 herein, except as otherwise stated on information and belief, and as to such facts I am informed  
 23 and believe they are true. If called as a witness, I could and would competently testify thereto.

24 3. On or about October 24, 2008, Johns & Allyn, A.P.C. entered into an "Attorney-  
 25 Client Fee Agreement" (hereinafter "Fee Agreement") with Plaintiff MICHAEL DeMARTINI to  
 26 provide legal representation with respect two matters pending in the Superior Court of  
 27 California, in and for the County of Marin, entitled *Timothy P. DeMartini, et al. v. Michael*  
 28

JCS

1 *DeMartini, et al.* bearing Case Nos. CIV 085234 and CIV 085235. Shortly thereafter, on  
2 November 7, 2008, Plaintiff RENATE DeMARTINI signed the same Fee Agreement and  
3 became a party to the contract for legal representation. Pursuant to the terms of the Fee  
4 Agreement, Johns & Allyn, A.P.C. agreed to provide legal representation to Plaintiffs on the  
5 above matters for monetary reimbursement at an agreed hourly rate.

6 4. Plaintiffs MICHAEL AND RENATE DEMARTINI were residents of Reno,  
7 Nevada at the time they entered into the Fee Agreement. It is my belief that Plaintiffs are still  
8 residents of the State of Nevada.

9 5. At all relevant times, Johns & Allyn, A.P.C. performed satisfactory legal  
10 representation on behalf of Plaintiffs pursuant to the terms set forth in the Fee Agreement and  
11 subsequent modifications made thereto. In addition, regular invoices were sent to Plaintiffs in  
12 accordance with the terms of the Fee Agreement for payment of legal services rendered by Johns  
13 & Allyn, A.P.C.

14 6. Based upon the Fee Agreement and modifications thereto, Plaintiffs MICHAEL  
15 and RENATE DeMARTINI have incurred more than \$300,000 in fees as a result of legal  
16 representation provided by Johns & Allyn, A.P.C in the Marin Superior Court matters, Case Nos.  
17 CIV 085234 and CIV 085235. The nature of the legal representation performed by Johns &  
18 Allyn, A.P.C. pertained to the partitioning of property, the value of which was appraised at  
19 amounts far in excess of the jurisdictional minimum of \$75,000.

20 7. On or about July 6, 2012, I was informed of the existence of Plaintiffs' complaint  
21 in the Superior Court of California, in and for the County of Marin, entitled *Michael DeMartini,*  
22 *et al. v. Thomas Christopher Johns, et al. and Does 1 through 30*, bearing Case No. CIV  
23 1202961 ("Complaint") and, thereafter I promptly obtained a copy of the Complaint. [A copy of  
24 the Complaint is attached hereto as Exhibit A.]  
25

26 //

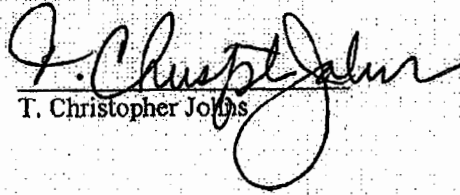
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1           8.     To date, neither Johns & Allyn, A.P.C nor I have received formal service of  
2 Plaintiff's Complaint or Summons.

3           I declare under penalty of perjury under the laws of the United States of America that the  
4 foregoing is true and correct.

5           Executed this 25<sup>th</sup> day of July, 2012 at San Rafael, CA.

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9           T. Christopher Johns  
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**EXHIBIT A**



PLD-C-001

SHORT TITLE:

DeMartini, et al. v. Johns &amp; Allyn, et al.

CASE NUMBER:

## 4. (Continued)

b. The true names of defendants sued as Does are unknown to plaintiff.

- (1) ☒ Doe defendants (specify Doe numbers): 1-15 were the agents or employees of the named defendants and acted within the scope of that agency or employment.
- (2) ☒ Doe defendants (specify Doe numbers): 16-30 are persons whose capacities are unknown to plaintiff.
- c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.
- d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

5. ☐ Plaintiff is required to comply with a claims statute, and

- a. ☐ has complied with applicable claims statutes, or
- b. ☐ is excused from complying because (specify):

6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.

## 7. This court is the proper court because

- a. ☐ a defendant entered into the contract here.
- b. ☐ a defendant lived here when the contract was entered into.
- c. ☐ a defendant lives here now.
- d. ☒ the contract was to be performed here.
- e. ☒ a defendant is a corporation or unincorporated association and its principal place of business is here.
- f. ☐ real property that is the subject of this action is located here.
- g. ☐ other (specify):

## 8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- ☒ Breach of Contract
- ☐ Common Counts
- ☒ Other (specify):  
See attached.

9. ☐ Other allegations:

## 10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. ☒ damages of: \$ According to proof
- b. ☒ interest on the damages
- (1) ☒ according to proof
- (2) ☐ at the rate of (specify): percent per year from (date):
- c. ☒ attorney's fees
- (1) ☐ of: \$
- (2) ☒ according to proof.
- d. ☐ other (specify):

11. ☐ The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date: June 27, 2012

Michael DeMartini; Renate DeMartini

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

PLD-C-001(1)

SHORT TITLE:

DeMartini, et al. v. Johns &amp; Allyn, et al.

CASE NUMBER:

First

(number)

## CAUSE OF ACTION—Breach of Contract

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): Michael DeMartini and Renate DeMartini

alleges that on or about (date): October 24, 2008

a ☒ written ☐ oral ☐ other (specify):

agreement was made between (name parties to agreement):

Michael DeMartini and Renate DeMartini; and Johns &amp; Allyn, A.P.C. and Christopher Johns

☐ A copy of the agreement is attached as Exhibit A, or☒ The essential terms of the agreement ☐ are stated in Attachment BC-1 ☒ are as follows (specify):

Johns & Allyn, A.P.C. and Thomas Christopher Johns agreed to provide legal services and represent Plaintiff relating to Marin County Superior Court Actions: (1) Timothy P. DeMartini, et al. v. Michael DeMartini and Renate DeMartini, et al., No. CIV 085234; and (2) Timothy P. DeMartini, et al. v. Michael DeMartini and Renate DeMartini, No. CIV 085235.

BC-2. On or about (dates):

defendant breached the agreement by ☐ the acts specified in Attachment BC-2 ☒ the following acts (specify):

Johns & Allyn, A.P.C. and Thomas Christopher Johns, failed to represent Plaintiff, failed to comply with the terms of the agreement, breached the fiduciary duty to Plaintiff, and was negligent and, thus expressly and/or impliedly breaching the contract.

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

☐ as stated in Attachment BC-4 ☒ as follows (specify):

According to proof

BC-5. ☐ Plaintiff is entitled to attorney fees by an agreement or a statute☐ of \$☒ according to proof.BC-6. ☐ Other:

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Page 1 of 1

**SHORT TITLE:**

DeMartini, et al. v. Johns & Allyn, et al.

**Second CAUSE OF ACTION – NEGLIGENCE**

**ATTACHMENT TO: Complaint**

**Plaintiff: Michael DeMartini and Renate DeMartini**

alleges that on or about October 23, 2008 – September 30, 2011, Defendant was negligent with regards to Plaintiff and that Plaintiff suffered damages according to proof and that Plaintiff is entitled to attorney fees by an agreement or a statute according to proof.

**SHORT TITLE:**

DeMartini, et al. v. Johns & Allyn, et al.

**Third CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY**

**ATTACHMENT TO: Complaint**

**Plaintiff: Michael DeMartini and Renate DeMartini**

alleges that on or about October 23, 2008 – September 30, 2011, Defendant breached a fiduciary duty to Plaintiff and that Plaintiff suffered damages according to proof and that Plaintiff is entitled to attorney fees by an agreement or a statute according to proof.